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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,376	12/06/2001	Guy Harles	HO659/7009 WRM	2569

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William R. McClellan, Esq.
Wolf, Greenfield & Sacks, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210

EXAMINER

PATHAK, SUDHANSHU C

ART UNIT	PAPER NUMBER
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2634

6

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,376

Applicant(s)

HARLES ET AL.

Examiner

Sudhanshu C. Pathak

Art Unit

2634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 6th, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 5 is/are rejected.
- 7) ☒ Claim(s) 3 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 6th, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-to-6 are pending in the application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 4 (Method & Apparatus) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 & 15 (Method & Apparatus) of U.S. Patent No. 6,535,546 (Bethscheider et al.). Although the conflicting claims are not identical, they are not patentably distinct from each other.

Regarding to Claims 1 & 4, the claims 6 & 15 of the issued patent (6,535,546) disclose all the limitations as recited in the claims 1 & 4 of the present application. The claims 1 & 4 of the present application merely broaden the scope of patent claims 6 & 15, by reciting that the spreaded clean carrier signal is transmitted through the communication channel at a first predetermined level, wherein the claims 6 & 15 of the patent disclose that the clean carrier signal is transmitted

through the communication channel at a level below the level of the payload signal.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that in the patented claims the level of the clean carrier signal transmitted is predetermined and is below the level of the payload signal.

Furthermore, the patented claims describe how the correlation peak is determined and implemented to determine the amplitude response of the communication channel. Furthermore, the patented claims disclose determining both the amplitude response and the group delay of the communication channel. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that the application claims 1 & 4 would be obvious by reading the patented claims 6 & 15.

4. Claims 2, 5 (Method & Apparatus) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 & 15 (Method & Apparatus) of U.S. Patent No. 6,535,546 (Bethscheider et al.) in view of U.S. Patent No. 4,637,017 (Assal et al.).

Regarding to Claims 2 & 5, the claims 6 & 15 of the issued patent (6,535,546) disclose all the limitations as recited in the claims 1 & 4 of the present application. However, the claims of the above-mentioned patent (6,535,546) do not disclose that the payload signal is transmitted at the communication channel adjacent to the channel where the spreaded clean carrier signal is transmitted.

Assal discloses a method for monitoring the characteristics of the transmitter amplifier in a satellite communication system so as to avoid adjacent channel

interference (Abstract, lines 1-22 & column 1, lines 10-25 & Column 2, lines 54-68 & Column 3, lines 1-41). Assal also discloses transmitting a continuous wave (CW) pilot for the process of the determination and monitoring the amplifier adjacent to the payload signal (Column 5, lines 14-35, 50-68 & Column 6, lines 1-23 & Column 3, lines 54-68 & Claim 1 & Fig. 2, 5-6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that Assal teaches transmitting a pilot signal at a frequency adjacent to the channel frequency of the payload signal, and this can be implemented in the system as described in Bethscheider so as to simultaneously determine the level of the adjacent channel signal so as to avoid the interference between adjacent signals in a satellite communications system, thus satisfying the limitation of the claim.

Allowable Subject Matter

5. Claims 3, 6 (Method & Apparatus) are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sudhanshu C. Pathak whose telephone number is (703)-305-0341. The examiner can normally be reached on M-F: 9am-6pm.
 - If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on (703)-305-4714.

- The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sudhanshu C. Pathak


STEPHEN CHIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600